

REMARKS

Claims 19-25 and 27-38 are currently pending in this application, with Claims 19, 22, and 23 being independent claims. The claims are rejected as follows:

Claims 19-25, 27-29, 31-35 and 37-38 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,088,990 to Isomursu et al. (hereinafter, "Isomursu").

Claim 30 is rejected under 35 U.S.C. §103(a) as being unpatentable over Isomursu in view of U.S. Patent Application Publication No. 2001/0041560 to Tarkiainen et al. (hereinafter, "Tarkiainen").

Claim 36 is rejected under 35 U.S.C. §103(a) as being unpatentable over Isomursu in view of U.S. Patent Application Publication No. 2003/0100336 to Cronin.

Regarding the §102(e) rejection of independent Claims 19, 22, and 23, these Claims 19, 22, and 23 are not anticipated by Isomursu. As recited in MPEP 706.02(IV), "for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly." MPEP §2131 Anticipation, clearly states that to anticipate a claim, the reference must teach every element of the claim. In addition, The United States Court of Appeals for the Federal Circuit recently held "that unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102." *Net Moneyin, Inc., v. Verisign, Inc.*, 2008 U.S. App. LEXIS 21827 (CAFC 2008). The Examiner has not met his initial burden of proof to establish a prima facie case for the §102(e) rejection.

At the very least, Isomursu does not teach, "wherein the data format of the schedule-recordable SMS message includes parameters indicating use of an alert tone for the schedule and a type of the alert tone." The Examiner asserts that Isomursu teaches this limitation, citing

Isomursu, at column 5, line 52-column 6, line 60, column 7, line 55-column 8, line 63. (Final Office Action, page 6). Further, in the Examiner's Response to Arguments, the Examiner asserts that according to a broadest reasonable interpretation of the claims, the term "tone" may be interpreted according to various definitions of the word "tone" corresponding to various aspects of color, such as absorption, reflection, tint, shade, value, or chroma. (Final Office Action, pages 2-3, citing dictionary.reference.com). In view of this interpretation of the term "tone", the Examiner asserts that displaying and alerting a user of an incoming SMS message corresponds to the above-quoted limitation of the independent claims.

Firstly, regarding the Examiner's assertion that the term "tone" corresponds to a color value, as stated by the Examiner, "The broadest reasonable interpretations of the claims must also be consistent with the interpretation that those skilled in the art would reach." (Final Office Action, page 2, citing In re Cortright, 165 F.3d 1353, 1359, 49, USPQ2d 1464, 1468 (Fed Cir. 1999) and MPEP §2111). In the Office Action, the Examiner cites particular definitions of the word "tone" in isolation, but does not consider the definition of the complete term "alert tone", as recited in the claims, as well as understood by those having ordinary skill in the art.

For more than sixty years, the term "alert tone" has consistently been used to refer to audio alerts to be output by electronic devices, such as in U.S. Patent No. 2,367,327 filed in 1942, for example, as well as numerous other U.S. patents and applications, in addition to other non-patent literature. The Examiner has not provided any evidence of use of the complete term "alert tone" in the manner asserted by the Examiner that is consistent with usage of the complete term by those having ordinary skill in the art.

This proper definition of the complete term "alert tone" corresponding to audio is also consistent with definitions of the word "tone" found at dictionary.reference.com website cited by the Examiner. Although it is noted that the Examiner has cited three definitions numbered 9-11 relating to color, it is further noted that the Examiner has omitted the first eight definitions 1-8,

which all rank higher than the Examiner's asserted definition and also correspond to audio. Although the Examiner has referred to a definition of the term "tone" in isolation, the Examiner has not provided any evidence in support of the assertion that the definition selected by the Examiner would be a definition selected by one having ordinary skill in art, especially in view of evidenced use of the term "alert tone" as corresponding to audio, as explained above.

Further, during a telephone interview conducted on June 21, 2011, the Examiner conceded that it was understood that the term "ring tone" was understood by those having ordinary skill in the art as an audio tone, but not a color-related tone. Accordingly, the word "tone" within the complete term "alert tone" should be interpreted according to common usage by those having ordinary skill in the art in the same manner as the word "tone" within the complete term "ring tone." During the interview, the Examiner did not provide any substantive reasons based on evidence as to why the term "ring tone" is interpreted as corresponding only to audio, while the term "alert tone" is interpreted as corresponding to color.

Therefore, since the Examiner's cited definition of the word "tone" in isolation by removal from the complete term "alert tone", is inconsistent with the definition of the complete term "alert tone" as used by those having ordinary skill in the art.

Regardless, even if the claims of the present application were compared to Isomursu in view of the Examiner's interpretation of the term "tone" as a color value, Isomursu would not teach the above-quoted limitation of the claims. More specifically, in the Examiner's response to arguments, the Examiner asserts that Isomursu teaches that a device outputs a notification of an SMS message. However, Isomursu does not teach that a value corresponding to any color values of such a notification is included within the SMS message itself. Further, the claims of the present application do not refer to a notification of the SMS message itself, but an alert tone for a schedule. The passages cited by the Examiner regarding this limitation (i.e., column 5, line 52-column 6, line 60, column 7, line 55-column 8, line 63) do not include any reference to a color

and/or audio value included within an SMS message, and further do not teach that a color value for a schedule is included within an SMS message.

Further, Isomursu does not teach the above-quoted limitations of the claims in view of the proper interpretation of the complete term “alert tone.” Although column 8 of Isomursu refers to a meeting name, time, and place, Isomursu does not refer to including parameters indicating use of an alert tone and type of an alert tone within an SMS message. Therefore, for at least the reasons stated above, Isomursu does not teach, “wherein the data format of the schedule-recordable SMS message includes parameters indicating use of an alert tone for the schedule and a type of the alert tone” arranged or combined in the same manner as recited in the claims.

For at least the reasons stated above, Isomursu fails to teach all of the limitations of independent Claims 19, 22, and 23 arranged or combined in the same manner as recited in the claims. Therefore, independent Claims 19, 22, and 23 are not Isomursu. Accordingly, withdrawal of the §102(e) rejection of independent Claims 19, 22, and 23 is respectfully requested.

Claims 20-21, 24-25, and 27-38 are dependent claims, and are believed to be in condition for allowance for at least the reasons given above with regard to their respective independent Claims 19 and 23.

Accordingly, all of the claims pending in the Application, namely, Claims 19-25 and 27-38, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Farrell", written in a cursive style.

Paul J. Farrell
Reg. No. 33,494
Attorney for Applicants

THE FARRELL LAW FIRM, PC
290 Broadhollow Road, Suite 210 E
Melville, New York 11747
Tel: (516) 228-3565
Fax: (516) 228-8475